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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 42751
Plaintiff-Respondent,)	
)	Bonneville County Case No.
v.)	CR-2009-14919
)	
SHEILA DAWN BEE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Bee failed to establish that the district court abused its discretion by revoking her probation following her fifth probation violation?

Bee Has Failed To Establish That The District Court Abused Its Sentencing Discretion

In 2010, Bee was convicted of burglary and the district court withheld judgment and placed her on supervised probation for four years. (R., p.53.) Approximately two months later, Bee violated her probation and the district court revoked the withheld judgment, imposed a unified sentence of five years, with two years fixed, suspended the

sentence, and reinstated Bee on supervised probation. (R., p.19.) Less than four months later, Bee again violated her probation and the district court again continued her on supervised probation. (R., p.53.)

In August 2012, Bee violated her probation a third time and the district court revoked her probation, ordered the underlying sentence executed, and retained jurisdiction. (R., p.53.) Following the period of retained jurisdiction, the district court once again suspended Bee's sentence and placed her on supervised probation for five years. (R., pp.19-22.)

Less than one year later, Bee violated her probation a fourth time and the district court again continued her on supervised probation. (R., pp.26-27, 35-36.) Approximately four months later, Bee violated her probation a fifth time and the district court finally revoked her probation and ordered the underlying sentence executed. (R., pp.40-41, 53-55.) Bee filed a notice of appeal timely from the district court's order revoking probation and ordering her underlying sentence executed. (R., pp.44-47, 56-60.)

Bee asserts that the district court abused its discretion by revoking probation following her *fifth* probation violation in light of her substance abuse and mental health issues. (Appellant's brief, pp.3-4.) Bee has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider "whether the probation [was] achieving

the goal of rehabilitation and [was] consistent with the protection of society.” Drennen, 122 Idaho at 1022, 842 P.2d at 701.

At the disposition hearing following Bee’s fifth probation violation, the state addressed Bee’s ongoing criminal behavior, substance abuse, and refusal to abide by the terms of community supervision; her failure to rehabilitate despite numerous programming and treatment opportunities; and the risk she presents to the community. (11/5/14 Tr., p.6, L.8 – p.8, L.11.) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for revoking Bee’s probation. (11/5/14 Tr., p.9, L.14 – p.11, L.14.) The state submits that Bee has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the November 5, 2014 disposition hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court’s order revoking probation and ordering Bee’s underlying sentence executed.

DATED this 17th day of September, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of September, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

KIMBERLY E. SMITH
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

DISPOSITION HEARING

NOVEMBER 5, 2014

THE COURT: All right. Let's go on the record in Case No. CR-09-14919, State of Idaho vs. Sheila Dawn Bee.

Present on behalf of the State of Idaho is Penny North-Shaul, Deputy Prosecuting Attorney.

Present on behalf of the defendant is Scott Davis.

We're accompanied by Angela Catlin from the Department of Probation and Parole.

This is the time for hearing with regard to disposition/evidentiary hearing. The defendant previously appeared in court on October 8th and entered admissions to violation 4(e) and 2 and continued a denial as to Rule 1, and this was set over for hearing today.

Where are we on this, Mr. Davis?

MR. DAVIS: Your Honor, I think we're at the same position as far as simply the legal status of what the violation calls for. At the time that the violation was written, she had been given 30 days' notice as far as eviction. She has willfully stopped living there.

THE COURT: All right. Well, I think the difficulty arises if she's no longer eligible for the

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facility, we either have to have her in another facility or something else, because --

MR. DAVIS: Yes, Your Honor. I think the facts are true, but whether that's a willful violation --

THE COURT: I think it's more -- do you have any objection to my just considering that informational rather than a violation?

MS. SHAUL: No, Your Honor. I think there's enough violations to do what we need to do with her.

THE COURT: All right. So I'll just take that as an informational comment, and then we'll deal with disposition as to the first two.

MR. DAVIS: Very good, Your Honor.

THE COURT: So I'll hear you with regard to disposition.

MR. DAVIS: Your Honor -- since the last hearing in October, Your Honor, Ms. Bee has made some applications to problem-solving court. Mental health Court was not willing to accept her.

That leaves us in a kind of a difficult spot, because I don't believe that Ms. Bee can deal without the support necessary. It's been suggested by her family and by herself that if this Court could fashion something with BHC and the State hospital, but I'm not sure that this Court has the authority to do that.

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And that leaves us kind of in a situation where -- I would like this Court to continue Ms. Bee on probation, under essentially the same conditions, but give us some time to try another assisted-living program, and try to get her signed up for that. I think the State has a slightly different take on the matter.

THE COURT: Ms. Shaul.

MS. SHAUL: Thank you, Your Honor. At this time, Your Honor, we are asking that the Court revoke probation and order execution of sentence.

It looks like Ms. Bee has had significant attempts to deal with her in the community. She was in Bonneville County Mental Health Court, Upper Valley Mental Health Court. I'm looking at a probation violation dated July 25th of 2012 just to give you some of the historical information. That's what she'd had by July of 2012 in terms of treatment and programming.

Then we come forward to 2014, and she's now done a traditional retained jurisdiction and then was placed back on probation. She's had the benefit of aftercare treatment, MRT, mental health referral, and she's just simply continued to struggle with what is criminal-thinking issues.

If you look the probation violation from July of 2012, it's comprised primarily of her stealing and

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damaging other people's property. And now we look at the current probation violation, and once again, damaging property because she was trying to conceal them and take them without payment.

She -- now, of course we have withdrawn the allegation that she was given the 30-day notice and was no longer welcome to live there, treating it more as an informational type -- more as informational purposes, but still it goes to her inability to comply with the requirements of being on supervision in the community.

And there isn't a place to put her. We don't have a place to put her. She's not going to be accepted back into a problem-solving court because we've already tried that twice and it hasn't worked. She can't go back and live at Eagle Rock Assisted Living because she's no longer welcome there, so we don't have that option.

I appreciate Mr. Bee writing the letter that he wrote to the Court dated October 28th of 2014. But I don't believe that it is a viable option to have her do some sort of living arrangement that is a combination of residing at BHC and at State Hospital South. That's just not an option.

So really she's backed everyone into a corner, including herself, because she won't control her

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behavior and she won't comply with the requirements of being on probation. And so I think we're really at a point where we can't stop her from continuing to commit crimes in the community and continuing to struggle with substance abuse issues because she won't let us.

So at this point, Your Honor, we don't have a choice but to ask you to revoke her probation. I frankly am not even sure that there's any, really, retained jurisdiction option that would help her. And so, that's where I'm at, asking the Court to revoke probation and order execution of sentence.

THE COURT: Ms. Bee, do you wish to make any statement on your own behalf before I decide what to do here?

THE DEFENDANT: Yes, sir. Although I do agree that I have continued with my behavior, I feel that this time is different, and I feel that BHC or State Hospital South would help and be beneficial. I don't believe I will get the help and treatment necessary in prison.

I am willing to change. I am willing to do more UAs. I want to buy my own Breathalyzer. And if -- if the Court decides I can stay with family, they won't let me go anywhere. My mom won't allow alcohol into the house. I don't want it -- I don't want it anymore, and I enjoy being clean and sober.

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I work with mental wellness agency and they have groups for me every day of the week, except Thursdays. Thursdays I can go to LDS Twelve Step. That's for AA meetings. I don't even have to go to stores at all. I can have someone do shopping for me.

I need and want help and treatment. And I am willing to embrace it with an open heart and mind. And I do want to stay sober and change my life. I just need to stay busy. I need to find a job, or a volunteer job, if not a paying job.

That's all I've got.

THE COURT: Anything else?

THE DEFENDANT: No. That will be it, sir.

THE COURT: Well, Ms. Bee, I'm a bit frustrated. We've been dealing with this for nearly five years. And I'm seeing the same pattern of behavior now as I saw in the beginning. And we've tried many, many -- I mean just a graduated step up each time, to get you in some sort of a situation where the restrictions were sufficient to do what you've just described.

But, as to how you -- you know what has to be done. Why you can't do it, even with that level of -- high level of supervision that we did with this last provision to have you in an assisted-living facility so that you were under observation most of the time, it's

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beyond me.

What you're suggesting in terms of some sort of a combination of BHC and State Hospital is simply not within my purview. I don't have the authority to do that because that's not a function of the Department of Correction. That's a function of the Department of Health and Welfare, and they have their rules and regulations and procedures for addressing those issues, but that's not before me.

At one time we were trying to get -- within the Department of Corrections, an inpatient mental health facility. It was approved initially by the legislature and designs were done, but it's never been funded. And that would be a good place to have, but it's not there. So I don't have that tool.

And I don't know what to do in terms of I've got to protect the community from this kind of behavior, and, yet, whatever I try to do within the scope of the possibilities I have, it's not working.

So based upon your admissions to the allegations in the Report of Violation, I shall find that you are in violation of your probation. I shall further find that continued probation at this time is not viable.

There's no reasonable course that I can take in terms of retaining jurisdiction, so I have no option but

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to revoke probation in your case and order execution of sentence.

I would hope that the Department of Corrections will afford you appropriate mental health treatment to the extent I will recommend that. I can't order them to do that because I no longer have jurisdiction, but I think that's an appropriate thing to address.

But the bottom line is you've got to get on top of things yourself. Shoplifting and destruction of property and drinking are things that you choose to do. They're not things that just happen. And when you choose to violate the rules that you know are there and do those things, then you have to suffer the consequences.

That will be the order of the Court. You are advised that you have the right to appeal to the Idaho Supreme Court from this judgment. You have the right to be represented by an attorney on that appeal. If you cannot afford an attorney, one will be appointed to assist you at public expense, but you only have 42 days from today's date to file any Notice of Appeal.

You are hereby remanded to the custody of the Sheriff of Bonneville County for delivery to the proper agent of the Idaho Department of Correction and execution of sentence.

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